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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 18, 2000

COMMONWEALTH OF VIRGINIA ex rel:

STATE CORPORATION COMMISSION

CASE NO. CLK000311

Ex Parte: In the matter concerning
revised State Corporation Commission
Rules of Practice and Procedure

ORDER FOR NOTICE AND COMMENT OR REQUESTS FOR HEARING

The Commission's Rules of Practice and Procedure, now codified at 5 VAC 5-10-10 et seq. ("Rules"), were issued in 1974 and last revised in our Administrative Order, dated June 12, 1986, in Case No. CLK860572.¹ Since 1974, many changes have occurred in the industries and businesses subject to the regulatory authority of the Commission, including the introduction of competitive forces in the establishment of rates and provision of services formerly established by economic regulation, or the increased interest in reliance on these market forces.

The Commission has concluded that, in light of the passage of time and the changes occurring in these industries, it is appropriate to revisit our Rules. Accordingly, the Commission

¹ Commonwealth of Virginia, At the relation of the State Corporation Commission, Ex Parte: In the Matter of revising the Rules of Practice and Procedure of the State Corporation Commission.

Staff has prepared a proposed revision of the Rules of Practice and Procedure ("Proposed Rules"). Interested parties are invited to comment upon and suggest modifications or supplements to, or request hearing on, the Proposed Rules. The Commission's Division of Information Resources is directed to cause the Proposed Rules to be published in the Virginia Register of Regulations and to make the Proposed Rules available for inspection on the Commission's Internet website.

Accordingly, IT IS ORDERED THAT:

(1) This matter shall be docketed and assigned Case No. CLK000311.

(2) On or before August 14, 2000, the Commission's Division of Information Resources shall cause the Proposed Rules to be published in the Virginia Register of Regulations.

(3) On or before July 31, 2000, the Commission's Division of Information Resources shall make a downloadable version of the Proposed Rules available for access by the public at the Commission's website, <http://www.state.va.us/scc>. The Clerk of the Commission shall make a copy of the Proposed Rules available for public inspection in his office and provide a copy of the Proposed Rules, free of charge, in response to any written request for one.

(4) Interested persons wishing to comment, propose modifications or supplements to, or request hearing on the

Proposed Rules shall file an original and fifteen (15) copies of such comments, proposals, or request with the Clerk of the Commission, State Corporation Commission P.O. Box 2118, Richmond, Virginia 23218, on or before September 22, 2000, making reference to Case No. CLK000311.

(5) This matter is continued for further orders of the Commission.

CHAPTER 10

**STATE CORPORATION COMMISSION
RULES OF PRACTICE AND PROCEDURE**

PART I.

~~THE STATE CORPORATION COMMISSION.~~

~~5 VAC 5-10-10. Constitutionally created.~~

~~The Commission is a permanent body with powers and duties prescribed by Article IX of the Constitution and by statute.~~

~~5 VAC 5-10-20. Seal of Commission.~~

~~As described by the Code of Virginia, and when affixed to any paper, record or document, customarily by the Clerk of the Commission, the seal has the same force and effect for authentication as the seal of a court of record in the Commonwealth.~~

~~5 VAC 5-10-30. Principal office.~~

~~Tyler Building, 1300 E. Main Street, Richmond, Virginia; mailing address: Box 1197, Zip Code 23218.~~

~~5 VAC 5-10-40. Public sessions: writ or process.~~

~~Public sessions for the hearing of any complaint, proceeding, contest or controversy instituted or pending, whether of the Commission's own motion or otherwise, shall be at its principal office, or, in its discretion, when public necessity or the convenience of the parties requires, elsewhere in the Commonwealth. All notices, writs and processes of the Commission shall be returnable to the place of any such session. Sessions are held throughout the year except during August. All cases will be set for a day certain and the parties notified.~~

~~PART II.~~

~~ORGANIZATION.~~

~~5 VAC 5-10-50. The Commission.~~

~~The Commission consists of three members elected by the joint vote of the two houses of the General Assembly for regular staggered terms of six years.~~

~~5 VAC 5-10-60. Chairman.~~

~~One of its members is elected chairman by the Commission for a one year term beginning on the first day of February of each year.~~

~~5 VAC 5-10-70. Quorum.~~

~~A majority of the Commissioners shall constitute a quorum for the exercise of judicial, legislative, and discretionary functions of the Commission, whether there be a vacancy in the Commission or not, but a quorum shall not be necessary for the exercise of its administrative functions.~~

~~5 VAC 5-10-80. Administrative divisions.~~

~~The public responsibilities of the Commission are divided among the following divisions:~~

~~1. Public Utility Accounting.~~

~~Periodic audit of all public utilities, electric, gas, telephone, electric and telephone cooperatives, radio common carriers, water and sewer. Preparation of the analyses and studies incident to all utility applications to engage in affiliates' transactions, issue securities, acquire certificates of convenience and necessity and/or to increase rates.~~

~~2. Bureau of Financial Institutions.~~

~~Examination of and supervisory responsibility for all state chartered banks, trust companies, savings and loan associations, industrial loan associations, credit unions, small loan companies, money order sales and non-profit debt counseling agencies, as provided by law.~~

3. ~~Bureau of Insurance.~~

~~Licensing and examination of insurance companies and agents, including contracts and plans for future hospitalization, medical and surgical services, and premium finance companies; approval of policy forms; collection of premium taxes and fees; public filings of financial statements and premium rates; rate regulation.~~

4. ~~Clerk's Office.~~

~~Administration of the corporate statutes concerning the issuance of certificates of incorporation, amendment, merger, etc., the qualification of foreign corporations, and the assessment of annual registration fees; administration of the limited partnership statutes concerning the filing of certificates of limited partnership, amendment and cancellation, the registration of foreign limited partnerships, and the assessment of annual registration fees; public depository of corporate and limited partnership documents required to be filed with the Commission; provides certified and uncertified copies of documents and information filed with the Commission; statutory agent for service of process pursuant to §§ 8.01-285 *et seq.*, 13.1-637, 13.1-766, 13.1-836, 13.1-928, and 40.1-68 of the Code of Virginia; powers and functions of a clerk of a court of record in all matters within the Commission's jurisdiction.~~

5. ~~Communications.~~

~~Responsible for regulation of rates and services of telephone and radio common carriers, including administrative interpretations and rulings related to rules, regulations, rates and charges; investigation of consumer complaints; provides testimony in rate and service proceedings; development of special studies, including depreciation prescriptions; monitoring construction programs and service quality; administration of the Utility Facilities Act (§56-265.1 *et seq.* of the Code of Virginia) and maintenance of territorial maps as pertains to communications.~~

6. ~~Corporate Operations.~~

~~Records and maintains on computer systems or microfilm the information and documents filed with the Clerk's Office by corporations and limited partnerships; takes telephonic requests for copies of such documents and information; provides facilities for "walk in" viewing of such information and documents; responds to telephonic requests for specific information concerning corporations and limited partnerships of record in the Clerk's Office; processes requests for corporate and limited partnership forms prepared or prescribed by the Commission; processes various types of documents delivered to the Commission for filing, including annual reports, registered office/agent changes and annual registration fee payments.~~

~~7. ——— Economics and Finance.~~

~~——— Performs basic economic and financial research on matters involving the regulation of public utilities; conducts research on policy matters confronting the Commission; provides financial and economic testimony in rate hearings, and engages in developing administrative processes to facilitate the conduct of the Commission's regulatory responsibilities.~~

~~8. ——— Energy Regulation.~~

~~——— Responsible for regulation and rates and services of electric, gas, water and sewer utilities, including administrative interpretations and rulings relating to rules, regulations, rates and charges; investigation of consumer complaints; maintenance of territorial maps; preparation of testimony for rate and service proceedings; development of special studies, including depreciation prescriptions; monitoring construction programs and service quality; administration of the Utility Facilities Act (§56-265.1 *et seq.* of the Code of Virginia) and enforcement of safety regulations affecting gas pipelines and other facilities of gas utilities.~~

~~9. ——— General Counsel.~~

~~Analysis of facts and legal issues for the Commission, and for purposes of appeal, relative to all matters coming before the Commission, including certificates of convenience and necessity, facilities and rates affecting public utilities, insurance, banking, securities, transportation, etc.~~

~~10. Motor Carrier.~~

~~Reviews and evaluates motor carrier rules and regulations; develops legislative and internal procedural changes or modifications pertaining to motor carriers; work with other state and federal regulatory agencies and with motor carrier associations. Responsible for the registration of vehicles and commodity authorization pertinent to all tractors, three axle trucks (private and for hire) and all for hire buses qualified to move interstate through Virginia, and all intrastate for hire carriers, including taxicabs: certification or evidence of liability and cargo insurance: emergency authority to qualified carriers, a registry of agents for process on interstate carriers. The Motor Carrier Division is also responsible for the collection of the Virginia Motor Fuel Road Tax on a quarterly basis and also audits and examines the records of motor carriers for road tax liability. Enforcement of motor carrier laws, §56-273 *et seq.* of the Code of Virginia, and related rules and regulations of the Commissions, by investigation and the power to arrest. Analysis of facts and issues of the Commission relative to transportation companies, such as certificates of convenience and necessity sought by common carriers of persons or property, charter party carriers, household goods carriers, petroleum tank truck carriers, sight-~~

~~seeing carriers, and restricted parcel carriers, together with applications for rate increases or alterations of service by motor and other surface carriers. Analysis of information for use in prosecution before the Commission pertaining to transportation services.~~

~~11. — Public Service Taxation.~~

~~Administration of §§ 58.1-2600 to 58.1-2690 of the Code of Virginia, evaluation and assessment for local taxation to all real and tangible personal property of public service corporations: electric, gas, water, telephone and telegraph companies. Assessment of state taxes of public service corporations: gross receipts tax, pole line tax, and special revenue tax. The assessment, collection and distribution of taxes to localities for the rolling stock of certificated common carriers.~~

~~12. — Railroad Regulation.~~

~~Investigates, at its own volition or upon complaint, rail service and the compliance with rules, regulations, and rates by rail common carriers when intrastate aspects are involved. Analyzes and handles applications for intrastate rate increases or alteration of service, together with all or other rail tariff matters.~~

~~13. Securities and Retail Franchising.~~

~~Registration of publicly offered securities, broker dealers, securities salesmen, investment advisors and investment advisor representatives; complaint investigation "Blue Sky Laws"; registration of franchises and complaint investigation Retail Franchising Act (§13.1-557 *et seq.* of the Code of Virginia); registration of intrastate trademarks and service marks; administration of Take Over Bid Disclosure Act.~~

~~14. Uniform Commercial Code.~~

~~Administration of §§ 8.9-401 *et seq.* of the Code of Virginia, U.C.C. central filing office for financing statements, amendments, termination statements and assignments by secured parties nationwide, being primary secured interests in equipment and inventories; discharge the duties of the filing officer under the Uniform Federal Tax Lien Registration Act, § 55-142.1, *et seq.* of the Code of Virginia.~~

~~PART III.~~

~~ADMINISTRATIVE FUNCTIONS.~~

~~**5 VAC 5-10-90. Conduct of business.**~~

~~Persons who have business with the Commission will deal directly with the appropriate division, and all correspondence should be addressed thereto.~~

~~5 VAC 5-10-100. Acts of officers and employees.~~

~~Administrative acts of officers and employees are the acts of the Commission, subject to review by the Commissioner under whose assigned supervision within the Commission's internal division the function was performed.~~

~~5 VAC 5-10-110. Review of acts of officers and employees.~~

~~Anyone dissatisfied with any administrative action of an employee should make informal complaint to the division head, and if not thereby resolved, may present a complaint, as provided in 5 VAC 5-10-300, for review by the Commissioner under whose supervision the division head acted. Subject to the equitable doctrine of laches, and unless contrary to statute, administrative acts may be reviewed and corrected for error of fact or law at any time. If necessary to complete relief, an order may be entered effective retroactively.~~

~~5 VAC 5-10-120. Hearing before the Commission.~~

~~Upon written petition of any person in interest dissatisfied with any action taken by a division of the Commission, or by its failure to act, resulting from disputed facts or from disputed statutory interpretation or application, the Commission will set the matter for hearing. If the dispute be one of law only, in lieu of a hearing, the Commission may order a stipulation of facts and submission of the issues~~

~~and argument by written briefs. Oral argument in any such case shall be with the consent of the Commission.~~

~~PART IV.~~

~~PARTIES TO PROCEEDINGS.~~

~~5 VAC 5-10-130. Parties.~~

~~Parties to a proceeding before the Commission are designated as applicants, petitioners, complainants, defendants, protestants, or interveners, according to the nature of the proceeding and the relationship of the respective parties.~~

~~5 VAC 5-10-140. Applicants.~~

~~Persons filing formal written requests with the Commission for some right, privilege, authority or determination subject to the jurisdiction of the Commission are designated as applicants.~~

~~5 VAC 5-10-150. Petitioners.~~

~~Persons filing formal written requests for redress of some alleged wrong arising from acts or things done or omitted to be done in violation of some law administered by the Commission, or in violation of some rule, regulation or order issued thereby, are designated as petitioners.~~

~~5 VAC 5-10-160. Complainants.~~

~~Persons making informal written requests for redress of some alleged wrong arising from acts or things done or omitted to be done in violation of some law administered by the Commission, or in violation of some rule, regulation or order issued thereby are designated as complainants.~~

~~———— **5 VAC 5-10-170. Defendants.**~~

~~In all complaints, proceedings, contests, or controversies by or before the Commission instituted by the Commonwealth or by the Commission on its own motion, or upon petition, the party against whom the complaint is preferred, or the proceeding instituted, shall be the defendant.~~

~~———— **5 VAC 5-10-180. Protestants.**~~

~~Persons filing a notice of protest and/or protest in opposition to the granting of an application, in whole or in part, are designated as protestants. All protestants must submit evidence in support of their protest, and comply with the requirements of 5 VAC 5-10-360, 5 VAC 5-10-420, and 5 VAC 5-10-460. A protestant may not act in the capacity of both witness and counsel except in his own behalf. All cross examination permitted by a protestant shall be material and relevant to protestant's case as contemplated by 5 VAC 5-10-360, 5 VAC 5-10-420, and 5 VAC 5-10-460.~~

~~———— **5 VAC 5-10-190. Interveners.**~~

~~Any interested person may intervene in a proceeding commenced by an application, or by a Rule to Show Cause under 5 VAC 5-10-230, or by the Commission pursuant to 5 VAC 5-10-240, by~~

~~attending the hearing and executing and filing with the bailiff a notice of appearance on forms provided for that purpose. An intervener, subject to challenge for lack of interest and subject to the general rules of relevancy and redundancy, may testify in support of or in opposition to the object of the proceeding, may file a brief, and may make oral argument with leave of the Commission, but may not otherwise participate in the proceeding before the Commission.~~

~~———— **5 VAC 5-10-200. Counsel.**~~

~~No person not duly admitted to practice law before the court of last resort of any state or territory of the United States or of the District of Columbia shall appear as attorney or counsel in any proceeding except in his own behalf when a party thereto, or in behalf of a partnership, party to the proceeding, of which such person is adequately identified as a member; provided, however, no foreign attorney may appear unless in association with a member of the Virginia State Bar.~~

~~———— **5 VAC 5-10-210. Commission's staff.**~~

~~Members of the Commission's staff appear neither in support of, nor in opposition to, any party in any cause, but solely on behalf of the general public interest to see that all the facts appertaining thereto are clearly presented to the Commission. They may conduct investigations and otherwise evaluate the issue or issues raised, may testify and offer exhibits with reference thereto, and shall be subject to cross examination as any other witness. In all proceedings the Commission's staff is represented by the General Counsel division of the Commission.~~

~~5 VAC 5-10-220. Consumer counsel.~~

~~Section 2.1-133.1 of the Code of Virginia provides for a Division of Consumer Counsel within the office of the Attorney General, the duties of which, in part, shall be to appear before the Commission to represent and be heard on behalf of consumers' interests, and investigate such matters relating to such appearance, with the objective of insuring that any matters adversely affecting the interests of the consumer are properly controlled and regulated. In all such proceedings before the Commission, the Division of Consumer Counsel shall have as full a right of discovery as is provided by these rules for any other party, and otherwise may participate to the extent reasonably necessary to discharge its statutory duties.~~

~~5 VAC 5-10-230. Rules to show cause.~~

~~Investigative, disciplinary, and penal proceedings will be instituted by rule to show cause at the instigation of the Commonwealth, by the Commission's own motion as a consequence of any unresolved valid complaint upon petition, or for other good cause. In all such proceedings the public interest shall be represented and prosecuted by the General Counsel division. The issuance of such a rule does not place on the defendant the burden of proof.~~

~~5 VAC 5-10-240. Promulgation of general orders, rules or regulations.~~

~~Before promulgating any general order, rule or regulation, the Commission shall give reasonable notice of its contents and shall afford interested persons having objections thereof an opportunity to present evidence and be heard. Oral argument in all such cases shall be by leave of the Commission, but briefs in support or opposition will be received within a time period fixed by the Commission.~~

~~———— **5 VAC 5-10-250. Consultation by parties with Commissioners.**~~

~~No party, or person acting on behalf of any party, shall confer with, or otherwise communicate with, any Commissioner with respect to the merits of any pending proceeding without first giving adequate notice to all other parties, other than interveners under 5 VAC 5-10-190, and affording such other parties full opportunity to be present and to participate, or otherwise to make appropriate response to the substance of the communication.~~

~~———— **5 VAC 5-10-260. Consultation between Commissioners and their staff.**~~

~~As provided by 5 VAC 5-10-210, no member of the Commission's staff is a "party" to any proceeding before the Commission, regardless of his participation in staff investigations with respect thereto or of his participation therein as a witness. Since the purpose of the staff is to aid the Commission in the proper discharge of Commission duties, the Commissioners shall be free at all times to confer with their staff, or any of them, with respect to any proceeding. Provided, however, no facts not of record which reasonably could be expected to influence the decision in any matter pending before the Commission shall be furnished to any Commissioner unless all parties to the proceeding, other than~~

~~interveners under 5 VAC 5-10-190, be likewise informed and afforded a reasonable opportunity to respond.~~

~~PART V.~~

~~PLEADINGS.~~

~~5 VAC 5-10-270. Nature of proceeding.~~

~~The Commission recognizes both formal and informal proceedings. Matters requiring the taking of evidence and all instances of rules to show cause are considered to be formal proceedings and must be instituted and progressed in conformity with applicable rules. Whenever practicable, informal proceedings are recommended for expeditious adjustment of complaints of violations of statute, rule or regulation, or of controversies arising from administrative action within the Commission.~~

~~5 VAC 5-10-280. Filing fees.~~

~~There are no fees, unless otherwise provided by law, for filing or prosecuting, or both, formal or informal proceedings before the Commission.~~

~~5 VAC 5-10-290. Declaratory judgments.~~

~~A person having no other adequate remedy may petition the Commission for a declaratory judgment under § 8.01-184 of the Code. In such a proceeding, the Commission shall provide by order for any necessary notice to third persons and intervention thereof, which intervention shall be by motion.~~

~~5 VAC 5-10-300. Informal proceedings (complaints).~~

~~Informal proceedings may be commenced by letter, telegram, or other instrument in writing, directed to the appropriate administrative division, setting forth the name and post office address of the person or persons, or naming the administrative division of the Commission, against whom the proceeding is instituted, together with a concise statement of all the facts necessary to an understanding of the grievance and a statement of the relief desired. Matters so presented will be reviewed by the appropriate division or Commissioner and otherwise handled with the parties affected, by correspondence or otherwise, with the object of resolving the matter without formal order or hearing; but nothing herein shall preclude the issuance of a formal order when necessary or appropriate for full relief.~~

~~5 VAC 5-10-310. Complaint -- an informal pleading.~~

~~All complaints under 5 VAC 5-10-300 are regarded initially as instituting an informal proceeding and need comply only with the requisites of that section.~~

~~5 VAC 5-10-320. Subsequent formal proceeding.~~

~~The instigation of an informal proceeding is without prejudice to the right thereafter to institute a formal proceeding covering the same subject matter. Upon petition of any aggrieved party, or upon its own motion if necessary for full relief, the Commission will convert any unresolved valid complaint to a~~

~~formal proceeding by the issuance of a rule to show cause, or by an appropriate order setting a formal hearing, upon at least 10 days notice to the parties, or as shall be required by statute.~~

~~———— **5 VAC 5-10-330. Rules to show cause; style of proceeding.**~~

~~———— A. Cases instituted by the Commission on its own motion against a defendant will be styled:~~

~~COMMONWEALTH OF VIRGINIA, *ex rel.*~~

~~STATE CORPORATION COMMISSION~~

~~v.~~

~~(Defendant's name)~~

~~———— B. Cases instituted by others against a defendant will be styled:~~

~~COMMONWEALTH OF VIRGINIA, *ex rel.* (Complainant's name)~~

~~v.~~

~~(Defendant's name)~~

~~———— **5 VAC 5-10-340. Promulgation of general orders, rules or regulations; style of proceeding.**~~

~~Proceedings instituted by the Commission for the captioned purposes will be styled:~~

~~COMMONWEALTH OF VIRGINIA, *ex rel.*~~

~~STATE CORPORATION COMMISSION~~

~~*Ex Parte*, in re~~

~~**5 VAC 5-10-350. Formal pleadings.**~~

~~Pleadings in formal proceedings include applications, petitions, notices of protest, protests, answers, motions, and comments on Hearing Examiners' Reports. Printed form applications supplied by administrative divisions are not subject to 5 VAC 5-10-360, 5 VAC 5-10-380, and 5 VAC 5-10-390.~~

~~**5 VAC 5-10-360. Contents.**~~

~~A. In addition to the requirements of 5 VAC 5-10-410 and 5 VAC 5-10-420, all formal pleading shall be appropriately designated ("Notice of Protest", "Answer", etc.) and shall contain the name and post office address of each party by or for whom the pleading is filed, and the name and post office address of counsel, if any. No such pleading need be under oath unless so required by statute, but shall be signed by counsel, or by each party in the absence of counsel.~~

~~———— B. Applications for tax refunds or the correction of tax assessments must comply with the applicable statutes.~~

~~———— **5 VAC 5-10-370. Amendments.**~~

~~No amendments shall be made to any formal pleading after it is filed except by leave of the Commission, which leave shall be liberally granted in the furtherance of justice. The Commission shall make such provision for notice and for opportunity to respond to the amended pleadings as it may deem necessary and proper.~~

~~———— **5 VAC 5-10-380. Copies and paper size required.**~~

~~———— A. The provisions of this rule as to the number of copies required to be filed shall control in all cases unless other rules applicable to specific types of proceedings provide for a different number of copies or unless otherwise specified by the Commission. The Commission may require additional copies of any formal pleading to be filed at any time.~~

~~———— B. Applications, together with petitions filed by utilities, shall be filed in original with 15 copies unless otherwise specified by the Commission. Applications, petitions, and supporting exhibits which are filed by a utility shall be bound securely on the left hand margin. An application shall not be bound in~~

~~volumes exceeding two inches in thickness. An application containing exhibits shall have tab dividers between each exhibit and shall include an index identifying its contents.~~

~~_____ C. Petitions, other than those of utilities, shall be filed in original and five copies.~~

~~_____ D. Pre trial motions whether responsive or special, shall be filed in original with four copies, together with service of one copy upon all counsel of record and upon all parties not so represented.~~

~~_____ E. Protests, notices of protest, answers, and comments on Hearing Examiners' Reports shall be filed in original with 15 copies, together with service of one copy upon counsel of record for each applicant or petitioner and upon any such party not so represented.~~

~~_____ F. All documents of whatever nature filed with the Clerk of the Commission (Document Control Center) shall be produced on pages 8 1/2 x 11 inches in size. This rule shall not apply to tables, charts, plats, photographs, and other material that cannot be reasonably reproduced on paper of that size.~~

~~_____ In addition all documents filed with the Clerk shall be fully collated and assembled into complete and proper sets ready for distribution and use, without the need for further assembly, sorting or rearrangement.~~

~~5 VAC 5-10-390. Filing and service by mail.~~

~~Any formal pleading or other related document or paper shall be considered filed with the Commission upon receipt of the original and required copies by the Clerk of the Commission at the following address: State Corporation Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23216. Said original and copies shall immediately be stamped by the Clerk showing date and time of receipt. Informal complaints shall conform to 5 VAC 5-10-300. Any formal pleading or other document or paper required to be served on the parties to any proceeding, absent special order of the Commission to the contrary, shall be effected by delivery of a true copy thereof, or by depositing same in the United States mail properly addressed and stamped, on or before the day of filing. Notices, findings of fact, opinions, decisions, orders or any other papers to be served by the Commission may be served by United States mail; provided however, all writs, processes, and orders of the Commission acting in conformity with § 12.1-27 of the Code of Virginia shall be attested and served in compliance with § 12.1-29 of the Code of Virginia. At the foot of any formal pleading or other document or paper required to be served, the party making service shall append either acceptance of service or a certificate of counsel of record that copies were mailed or delivered as required. Counsel herein shall be as defined in Rule 1:5, Rules of the Supreme Court of Virginia.~~

~~5 VAC 5-10-400. Docket or case number.~~

~~When a formal proceeding is filed with the Commission, it shall immediately be assigned an individual number. Thereafter, all pleadings, papers, briefs, correspondence, etc., relating to said proceeding shall refer to such number.~~

~~———— **5 VAC 5-10-410. Initial pleadings.**~~

~~A. The initial pleading in any formal proceeding shall be an application or a petition.~~

~~———— B. An application is the appropriate initial pleading in a formal proceeding wherein the applicant seeks authority to engage in some regulated industry or business subject to the Commission's regulatory control, or to make any changes in the presently authorized service, rate, facilities, or other aspects of the public service purpose or operation of any such regulated industry or business for which Commission authority is required by law. In addition to the requirements of 5 VAC 5-10-360, each application shall contain (i) a full and clear statement of facts which the party or parties are prepared to prove by competent evidence, the proof of which will warrant the objective sought; and (ii) details of the objective sought and the legal basis therefor.~~

~~———— C. A petition is the appropriate initial pleading in a formal proceeding wherein a party complainant seeks the redress of some alleged wrong arising from prior action or inaction of the Commission, or from the violation of some statute or rule, regulation or order of the Commission which it has the legal duty to administer or enforce. In addition to the requirements of 5 VAC 5-10-360, each~~

~~petition shall contain (i) a full and clear statement of facts which the party or parties are prepared to prove by competent evidence, the proof of which will warrant the relief sought; and (ii) a statement of the specific relief sought and the legal basis therefor.~~

~~—————~~ **5 VAC 5-10-420. Responsive Pleadings.**

~~A. The usual responsive pleadings in any formal proceeding shall be a notice of protest, protest, motion, answer, or comments on a Hearing Examiner's Report, as shall be appropriate, supplemented with such other pleadings, including stipulations of facts and memoranda, as may be appropriate.~~

~~————— B. A notice of protest is the proper initial response to an application in a formal proceeding by which a protestant advises the Commission of his interest in protecting existing rights against invasion by an applicant. Such notice is appropriate only in those cases in which the Commission requires the pre-filing of prepared testimony and exhibits as provided by 5 VAC 5-10-450 and 5 VAC 5-10-460. In all other cases, the appropriate initial responsive pleading of a protestant will be by protest as hereafter provided. In addition to the requirements of 5 VAC 5-10-360, a notice of protest shall contain a precise statement of the interest of the party or parties filing same, and it shall be filed within the time prescribed by the Commission as provided by 5 VAC 5-10-450.~~

~~—— C. A protest is a proper responsive pleading to an application in a formal proceeding by which the protestant seeks to protect existing rights against invasion by the applicant. It shall be the initial responsive pleading by a protestant in all cases in which the parties are not required to pre-file testimony and exhibits. When such a pre trial filing is required, a protest must be filed in support of, and subsequent to, a notice of protest. A protest must be filed within the time prescribed by the Commission Order which, in cases involving pre-filed testimony and exhibits, will always be subsequent to such filing by the applicant. In addition to the requirements of 5 VAC 5-10-360, a protest shall contain (i) a precise statement of the interest of the protestant in the proceeding; (ii) a full and clear statement of the facts which the protestant is prepared to prove by competent evidence, the proof of which will warrant the relief sought; and (iii) a statement of the specific relief sought and the legal basis therefor.~~

~~—— D. An answer is the proper responsive pleading to a petition or rule to show cause. An answer, in addition to the requirements of 5 VAC 5-10-360, shall contain (i) a precise statement of the interest of the party filing same; (ii) a full and clear statement of facts which the party is prepared to prove by competent evidence, the proof of which will warrant the relief sought; and (iii) a statement of the specific relief sought and the legal basis therefor. An answer must be filed within the time prescribed by the Commission.~~

~~———— E. A motion is the proper responsive pleading for testing the legal sufficiency of any application, protest, or rule to show cause. Recognized for this purpose are motions to dismiss and motions for more definite statement.~~

~~———— 1. Motion to Dismiss: Lack of Commission jurisdiction, failure to state a cause of action, or other legal insufficiency apparent on the face of the application, protest, or rule to show cause may be raised by motion to dismiss. Such a motion, directed to any one or more legal defects, may be filed separately or incorporated in a protest or any other responsive pleading which the Commission may direct be filed. Responsive motions must be filed within the time prescribed by the Commission.~~

~~———— 2. Motion for More Definite Statement: Whenever an application, protest, or rule to show cause is so vague, ambiguous, or indefinite as to make it unreasonably difficult to determine a fair and adequate response thereto, the Commission, at its discretion, on proper request, or of its own motion, may require the filing of a more definite statement or an amended application, protest, or rule and make such provision for the filing of responsive pleadings and postponement of hearing as it may consider necessary and proper. Any such motion and the response thereto must be filed within the time prescribed by the Commission.~~

~~_____ F. Comments are the proper responsive pleading to a report of a Hearing Examiner. Such comments may note a party's objections to any of the rulings, findings of fact or recommendations made by an Examiner in his Report, or may offer remarks in support of or clarifications regarding the Examiner's Report. No party may file a reply to comments on the Examiner's Report.~~

~~_____ **5 VAC 5-10-430. Improper joinder of causes.**~~

~~Substantive rules or standards, or the procedures intended to implement same, previously adopted by the Commission, governing the review and disposition of applications, may not be challenged by any party to a proceeding intended by these rules to be commenced by application. Any such challenge must be by independent petition.~~

~~_____ **5 VAC 5-10-440. Extension of time.**~~

~~The Commission may, at its discretion, grant an extension of time for the filing of any responsive pleading required or permitted by these rules. Applications for such extensions shall be made by special motion and served on all parties of record and filed with the Commission at least three days prior to the date on which the pleading was required to have been filed.~~

PART VI.

PREHEARING PROCEDURES.

~~_____ **5 VAC 5-10-450. Docketing and notice of cases.**~~

~~All formal proceedings before the Commission are set for hearing by order, which, in the case of an application shall also provide for notice to all necessary and potentially interested parties either by personal service or publication, or both. This original order shall also fix dates for filing prepared testimony and responsive pleadings, together with such other directives as the Commission deem necessary and proper. The filing of a petition resulting in the issuance of a show cause order (except for a declaratory judgment) shall be served as required by law upon the defendant or defendants. This order shall prescribe the time of hearing and provide for such other matters as shall be necessary or proper.~~

~~————~~ **5 VAC 5-10-460. Prepared testimony and exhibits.**

~~Following the filing of all applications dependent upon complicated or technical proof, the Commission may direct the applicant to prepare and file with the Commission, well in advance of the hearing date, all testimony in question and answer or narrative form, including all proposed exhibits, by which applicant expects to establish his case. Protestants, in all proceedings in which an applicant shall be required to pre file testimony, shall be directed to pre file in like manner and by a date certain all testimony an proposed exhibits necessary to establish their case. Failure to comply with the directions of the Commission, without good cause shown, will result in rejection of the testimony and exhibits by the Commission. For good cause shown, and with leave of the Commission, any party may correct or supplement, before or during hearing, all pre filed testimony and exhibits. In all proceedings all such evidence must be verified by the witness before the introduction into the record. An original and 15~~

~~copies of prepared testimony and exhibits shall be filed unless otherwise specified in the Commission's order and public notice. Documents of unusual bulk or weight, and physical exhibits other than documents, need not be prefiled, but shall be described and made available for pretrial examination. Interveners are not subject to this section.~~

~~———— **5 VAC 5-10-470. Process, witnesses and production of documents and things.**~~

~~———— A. In all matters within its jurisdiction, the Commission has the powers of a court of record to compel the attendance of witnesses and the production of documents, and any party complainant (petitioner) or defendant in a show cause proceeding under 5 VAC 5-10-230 shall be entitled to process, to convene parties, and to compel the attendance of witnesses and the production of books, papers or documents as hereinafter provided.~~

~~———— B. In all show cause proceedings commenced pursuant to 5 VAC 5-10-230, notice to the parties of the nature of the proceeding, hearing date and other necessary matters shall be effected by the Commission in accordance with § 12.1-29 of the Code of Virginia. Upon written request to the Clerk of the Commission by any party to such a proceeding, with instructions as to mode of service, a summons will likewise be issued directing any person to attend on the day and place of hearing to give evidence before the Commission.~~

~~———— C. In proceeding under 5 VAC 5-10-230, whenever it appears to the Commission, by affidavit filed with the Clerk by a party presenting evidence that any book, writing or document, sufficiently described in said affidavit, is in the possession, or under the control, of any identified persons not a party to the proceeding, and is material and proper to be produced in said proceeding, either before the Commission or before any person acting under its process or authority, the Commission will order the Clerk to issue a subpoena and to have same duly served, together with an attested copy of the aforesaid order, compelling production at a reasonable time and place.~~

~~———— D. In all proceedings intended by these rules to be commenced by application, the subpoena of witnesses and for the production of books, papers and documents shall be by order of the Commission upon special motion timely filed with the Clerk. Such a motion will be granted only for good cause shown, subject to such conditions and restrictions as the Commission shall deem proper.~~

~~———— **5 VAC 5-10-480. Interrogatories to parties or requests for production of documents and things.**~~

~~Any party to any formal proceeding before the Commission, except an intervener and other than a proceeding under 5 VAC 5-10-240 or a declaratory judgment proceeding, may serve written interrogatories upon any other party, other than the Commission's staff, provided a copy is filed simultaneously with the Clerk of the Commission, to be answered by the party served, or if the party~~

~~served is a corporation, partnership or association, by an officer or agent thereof, who shall furnish such information as is known to the party. No interrogatories may be served which cannot be timely answered before the scheduled hearing date without leave of the Commission for cause shown and upon such conditions as the Commission may prescribe.~~

~~Answers are to be signed by the person making them. Objections, if any, to specified questions shall be noted within the list of answers. Answers and objections shall be served within 21 days after the service of interrogatories, or as the Commission may otherwise prescribe. Upon special motion of either party, promptly made, the Commission will rule upon the validity of any objections raised by answers, otherwise such objections shall be considered sustained.~~

~~Interrogatories may relate to any matter, not privileged, which is relevant to the subject matter involved, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of evidentiary value. It is not necessarily grounds for objection that the information sought will be inadmissible at the hearing if such information appears reasonably calculated to lead to the discovery of admissible evidence.~~

~~All interrogatories which request answers requiring the assembling or preparation of information or data which might reasonably be considered as original work product are subject to objection.~~

~~Where the answer to an interrogatory may be derived or ascertained from the business records of the party questioned or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for one party as for the other, an answer is sufficient which specifies the records from which the answer may be derived and tenders to the questioning party reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts, or summaries.~~

~~————— This section shall apply, insofar as practicable, to requests for the production of documents and things and to the production of same in the same manner as it applies to written interrogatories and the answers filed thereto.~~

~~————— **5 VAC 5-10-490. Hearing preparation; experts.**~~

~~In a formal proceeding intended by these rules to be commenced by application, the applicant, any party protestant, and the Commission staff may serve on any other such party a request to examine the work papers of any expert employed by such party and whose prepared testimony has been pre-filed in accordance with the 5 VAC 5-10-460. The examining party may make copies, abstracts or summaries of such work papers, but in every case, except for the use of the Commission staff, copies of all or any portion or part of such papers will be furnished the requesting party only upon the payment of~~

~~the reasonable cost of duplication or reproduction. A copy of any request served as herein provided shall be filed with the Commission.~~

~~———— **5 VAC 5-10-500. Postponements.**~~

~~For cause shown, postponements, continuances and extensions of time will be granted or denied at the discretion of the Commission, except as otherwise provided by law. Except in cases of extreme emergency, requests hereunder must be made at least 14 days prior to the date set for hearing. In every case in which a postponement or continuance is granted it shall be the obligation of the requesting party to arrange with all other parties for a satisfactory available substitute hearing schedule. Absent the ability of the parties to agree, the Commission will be so advised and a hearing date will be set by the Commission. In either case, the requesting party shall prepare an appropriate draft of order for entry by the Commission, which order shall recite the agreement of the parties, or the absence thereof, and file the same with an additional copy for each counsel of record as prescribed in 5 VAC 5-10-390. Following entry, an attested copy of the order shall be served by the Clerk on each counsel of record.~~

~~———— **5 VAC 5-10-510. Prehearing conference.**~~

~~The Commission has the discretion in any formal proceeding to direct counsel of record to appear before it for conference to consider:~~

- ~~1. The simplification or limitation of issues;~~
- ~~2. The nature and preparation of prepared testimony and exhibits;~~
- ~~3. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;~~
- ~~4. The limitation of witnesses;~~
- ~~5. Such other matters as may aid in the disposition of the proceeding.~~

~~The Commission shall enter an order reciting the action taken at the conference, including any agreements made by the parties which limit the issues for hearing to those not disposed of by admissions or agreements of counsel. Such order shall control the subsequent course of the proceeding unless subsequently modified to prevent injustice.~~

~~Substantive rules or regulations, and any procedures intended to implement same, previously adopted by order of the Commission, applicable to regulated businesses or industries, or classes thereof, will be applied by the Commission in reviewing and disposing of any application thereafter filed by any such business or industry, whether incorporated in an appropriate prehearing order or not. Testimony or argument intended to cancel or modify any such rule or regulation, or implementing procedures, will not be entertained except in a separate proceeding instituted by the filing of an appropriate petition as provided in 5 VAC 5-10-430.~~

~~PART VII.~~

~~PROCEEDINGS BEFORE A HEARING EXAMINER.~~

~~5 VAC 5-10-520. Proceedings before a hearing examiner.~~

~~The Commission may, by order, assign any matter pending before it to a Hearing Examiner. In such event, and unless otherwise ordered, the Examiner shall conduct all further proceedings in the matter on behalf of the Commission, concluding with the filing of the Examiner's final report to the Commission. In the discharge of such duties, the Hearing Examiner shall exercise all the inquisitorial powers possessed by the Commission, including, but not limited to, the power to administer oaths, require the appearance of witnesses and parties and the production of documents, schedule and conduct pre-hearing conferences, admit or exclude evidence, grant or deny continuances, and rule on motions, matters of law, and procedural questions. Any party objecting to any ruling or action of said Examiner shall make known its objection with reasonable certainty at the time of the ruling, and may~~

~~argue such objections to the Commission as a part of its comments to the final report of said Examiner; provided, however, if any ruling by the Examiner denies further participation by any party in interest in a proceeding not thereby concluded, such party shall have the right to file a written motion with the Examiner for his immediate certification of such ruling to the Commission for its consideration. Pending resolution by the Commission of any ruling so certified, the Examiner shall retain procedural control of the proceeding. Unless otherwise ordered, these rules of practice and procedure shall apply to all proceedings conducted by Hearing Examiners in like manner as proceedings conducted by the Commission.~~

~~PART VIII~~

~~FORMAL HEARING~~

~~5 VAC 5-10-530. Official transcript of hearing.~~

~~The official transcript of a formal hearing before the Commission shall be the transcript of the stenographic notes taken at the hearing by the Commission's regularly employed court reporter and certified by him as a true and correct transcript of said proceeding. In the absence of the Commission's regular court reporter, the Commission will arrange for a suitable substitute whose certified transcript will be recognized as the official record. Parties desiring to purchase copies of the transcript of record shall make arrangement therefor directly with the Commission's reporter or substitute reporter.~~

~~Stenographic notes are not transcribed unless specifically requested by the Commission or by some party in interest who wishes to purchase same. When the testimony is transcribed, a copy thereof is always lodged with the Clerk where it is available for public inspection. (In the event of appeal from the Commission action the full record must be certified by the Clerk.)~~

~~**5 VAC 5-10-540. Procedure at hearing; receiving evidence; exhibits; cross-examination; rules of evidence.**~~

~~Except as otherwise provided in a particular case, hearings shall be conducted by and before the Commission substantially as follows:~~

~~1. The presiding Commissioner shall call the hearing to order and thereafter shall give or cause to be given:~~

~~a. The title of the proceeding to be heard and its docket number;~~

~~b. The appearances of the parties, or their representatives, desiring to participate in the hearing which appearances shall be stated orally for the record and shall give the person's name, post office address, and the nature of his interest in the proceeding. Parties will not be permitted to appear "as one's interest may appear". Appearances~~

~~will not be allowed for anyone who is not personally present and participating in the hearing. Interveners shall comply with 5 VAC 5-10-190;~~

~~_____ c. The introduction into the record of a copy of the notice stating the time, place and nature of the hearing, the date or dates such notice was given, and the method whereby it was served, together with any supporting affidavits which may be required;~~

~~_____ d. A brief statement of the issues involved, or the nature and purpose of the hearing;~~

~~_____ e. Any motions, or other matters deemed appropriate by the presiding Commission, that should be disposed of prior to the taking of testimony; and~~

~~_____ f. The presentation of evidence.~~

~~_____ 2. Unless otherwise directed by the Commission, or unless provided for in special rules governing the particular case, direct evidence ordinarily will be received in the following order, followed by such rebuttal evidence as shall be necessary and proper:~~

~~_____ a. Upon Applications: (i) interveners, (ii) applicant, (iii) Commission's staff, (iv) Division of Consumer Counsel, (v) protestants.~~

~~_____ b. Upon Rules to Show Cause under 5 VAC 5-10-230: (i) complainant, (ii) Commission's staff, (iii) Division of Consumer Counsel, (iv) defendant.~~

~~_____ c. Upon Hearing as provided under 5 VAC 5-10-240: (i) Commission's staff, (ii) Division of Consumer Counsel, (iii) supporting interveners, (iv) opposing interveners.~~

~~_____ d. Upon Petition under 5 VAC 5-10-120: (i) petitioner, (ii) Commission's staff.~~

~~_____ 3. Whenever exhibits are offered in evidence during a hearing, they will be received for identification and given an identifying number. All exhibits will be numbered consecutively beginning with the numeral "1", but will bear an identifying prefix such as "Applicant's", "Defendant's", "protestant's", the name or initials of the witness, etc. Exhibits will not be received in evidence until after cross examination. Parties offering exhibits at the hearing (other than those whose size or physical character make it impractical) must be prepared to supply sufficient copies to provide one each for the record, the court reporter, each Commissioner, and each Commission staff member and party or counsel actively participating in the hearing.~~

~~_____ 4. In all proceedings in which the Commission shall be called upon to decide or render judgment only in its capacity as a court of record, the common law and statutory rules of evidence shall~~

~~be as observed and administered by the courts of record of this State. In all other proceedings, due regard shall be given to the technical and highly complicated subject matter the Commission must consider, and exclusionary rules of evidence shall not be used to prevent the receipt of evidence having substantial probative effect. Otherwise, effect shall be given to the rules of evidence recognized by the courts or record of this State. In all cases, cross examination of witnesses shall first be by the Commission's counsel and then by the adverse parties, in such order as the Commission shall determine, limited as provided in PART IV (5 VAC 5-10-130 *et seq.*). Ordinarily, cross examination of a witness shall follow immediately after the direct examination. However, the Commission, as its discretion, may allow the cross examination to be deferred until later in the hearing or postponed to a subsequent date. Repetitious cross examination will not be allowed.~~

~~———— **5 VAC 5-10-550. Cumulative evidence.** ————~~

~~Evidence offered by a party may be excluded whenever in the opinion of the Commission such evidence is so repetitious and cumulative as to unnecessarily burden the record without materially adding to its probative qualities. When a number of interveners present themselves at any hearing to testify to the same effect so that the testimony of the several witnesses would be substantially the same, the Commission may, at its discretion, cause one of such witnesses to testify under oath and all other witnesses to adopt under oath such testimony of the first witness. However, the proper parties shall~~

~~have the right to cross-examine any witnesses who adopts the testimony of another and does not personally testify in detail.~~

~~———— **5 VAC 5-10-560. Judicial notice.**~~

~~The Commission will take judicial notice of such matters as may be judicially noticed by the court of this Commonwealth, and the practice with reference thereto shall be the same before the Commission as before a court. In addition the Commission will take judicial notice of its own decisions, but not of the facts on which the decision was based.~~

~~———— **5 VAC 5-10-570. Prepared statements.**~~

~~A witness may read into the record as his testimony statements of fact prepared by him, or written answers to questions of counsel; provided, such statements or answers shall not include argument. At the discretion of the Commission, such statements or answers may be received in evidence as an exhibit to the same extent and in the same manner as other exhibits concerning factual matters. In all cases, before any such testimony is read or offered in evidence, one copy each thereof shall be furnished for the record, the court reporter, each Commissioner, Commission staff member and party or counsel actively participating in the hearing. The admissibility of all such written statements or answers shall be subject to the same rules as if such testimony were offered in the usual manner.~~

~~5 VAC 5-10-580. Objections.~~

~~Rule 5:21 of the Rules of the Supreme Court of Virginia declares that error will not be sustained to any ruling below unless the objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable the Court to attain the ends of justice.~~

~~5 VAC 5-10-590. Oral arguments.~~

~~The Commission at any formal hearing may require or allow oral argument on any issue presented for decision. In adversary proceedings 30 minutes ordinarily will be allowed each side for oral argument; provided, however, the Commission may allow more or less time for such argument. The Commission may require, or grant requests for, oral argument on questions arising prior or subsequent to a formal hearing and fix the time and place for such argument. In all cases the Commission may limit the questions on which oral argument will be heard.~~

~~5 VAC 5-10-600. Briefs.~~

~~Written briefs may be required or allowed at the discretion of the Commission. The time for filing briefs shall be fixed at the time they are required or authorized. For the purpose of expediting any~~

~~proceeding wherein briefs are to be filed, the parties may be required to file their respective briefs on the same date, and, unless otherwise ordered by the Commission, reply briefs will not then be permitted or received. The time for filing reply briefs, if any, will be fixed by the Commission. Briefs should conform to the standards prescribed by Rule 5:33, Rules of the Supreme Court of Virginia. Five copies shall be filed with the Clerk, unless otherwise ordered, and three copies each shall be mailed or delivered to all other parties on or before the day on which the brief is filed. One or more counsel representing one party, or more than one party, shall be considered as one party.~~

~~———— **5 VAC 5-10-610. Petition for rehearing or reconsideration.** ————~~

~~All final judgments, orders and decrees of the Commission, except judgments as prescribed by § 12.1-36 of the Code of Virginia, and except as provided in §§ 13.1-614 and 13.1-813 of the Code of Virginia, shall remain under the control of the Commission and subject to be modified or vacated for 21 days after the date of entry, and no longer. A petition for a rehearing or reconsideration must be filed within said 21 days, but the filing thereof will not suspend the execution of the judgment, order or decree, nor extend the time for taking an appeal, unless the Commission, solely at its discretion, within said 21 days, shall provide for such suspension in an order or decree granting the petition. A petition for rehearing or reconsideration must be served on all other parties as provided by 5 VAC 5-10-380, but no response to the petition, or oral argument thereon, will be entertained by the Commission. An order granting a rehearing or reconsideration will be served on all parties by the Clerk.~~

~~5 VAC 5-10-620. Appeals generally.~~

~~Any final finding, decision settling the substantive law, order, or judgment of the Commission may be appealed only to the Supreme Court of Virginia, subject to § 12.1-39, *et seq.* of the Code of Virginia, and to Rule 5:21 of that Court. Suspension of Commission judgment, order or decree pending decision of appeal is governed by § 8.01-676 of the Code of Virginia.~~

CHAPTER 20

STATE CORPORATION COMMISSION
RULES OF PRACTICE AND PROCEDURE

PART I.

GENERAL PROVISIONS.

5 VAC 5-20-10. Applicability.

The State Corporation Commission Rules of Practice and Procedure are promulgated pursuant to the authority of § 12.1-25 of the Code of Virginia and are applicable to the regulatory and adjudicatory proceedings of the State Corporation Commission except where superseded by more specific rules for particular types of cases or proceedings. The commission may grant, upon motion or its own initiative, a waiver or modification of any of the provisions of the rules, except 5 VAC 5-20-220, under terms and conditions and to the extent it deems appropriate. These rules have no

application to the internal administration or organization of the commission in matters such as the procurement of goods and services, personnel actions, and similar issues, nor to matters finally determined by administrative action of a division or bureau of the commission.

5 VAC 5-20-20. Good faith pleading and practice; sanctions.

Every pleading, written motion, or other paper presented for filing by a party represented by an attorney shall be signed by at least one attorney of record in his individual name, and the attorney's mailing address and telephone number, and where available, telefax number and email address, shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his mailing address and telephone number. In the case of a business entity, each signature shall be that of a qualified officer or agent. The pleadings need not be under oath unless so required by statute.

The signature of an attorney or party constitutes a certification by him that: (i) he has read the pleading, motion, or other paper; (ii) to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. A pleading, written motion, or other paper will not be accepted for filing by the Clerk of the Commission if not signed.

An oral motion made by an attorney or party in a commission proceeding constitutes a representation by him that: (i) it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and (ii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

If a pleading, motion, or other paper is signed or made in violation of this rule, the commission may impose an appropriate sanction upon the person who signed the paper or made the motion, the party that the person represents, or both.

5 VAC 5-20-30. Counsel.

No person other than a properly licensed attorney at law shall represent the interests of a person or entity before the commission, other than in the presentation of facts, figures, or factual conclusions which are distinguished from legal conclusions. An officer or director of a corporation may make factual presentations on behalf of the corporation. An attorney admitted to practice in another jurisdiction, but not licensed in Virginia, may be permitted to appear in a particular proceeding pending before the commission in association with a member of the Virginia State Bar. The Virginia State Bar member will be counsel of record for every purpose related to the conduct and disposition of the proceeding.

5 VAC 5-20-40. Photographs and broadcasting of proceedings.

Electronic media and still photography coverage of commission hearings will be allowed at the discretion of the commission.

5 VAC 5-20-50. Consultation by parties with Commissioners.

No party, or any person acting on behalf of any party, may communicate ex parte with any commissioner with respect to the merits of any proceeding pending before the commission.

5 VAC 5-20-60. Commission staff.

The commissioners shall be free at all times to confer with any member of the commission staff. However, no facts likely to influence a pending formal proceeding and not of record in that proceeding shall be furnished ex parte to any commissioner by any member of the commission staff.

5 VAC 5-20-70. Informal complaints.

All correspondence and informal complaints shall be referred to the appropriate division or bureau of the commission. The head of the division or bureau receiving this correspondence or complaint shall attempt to resolve the matter presented. Matters not resolved by the informal proceeding may be reviewed by the full commission upon the proper filing of a formal proceeding in accordance with the rules.

PART II.

COMMENCEMENT OF FORMAL PROCEEDINGS.

5 VAC 5-20-80. Regulatory Proceedings.

A. Application. Except where otherwise provided by statute, a person or entity seeking to engage in an industry or business subject to the commission's regulatory control, or to make changes in any previously authorized service, rate, facility, or other aspect of such industry or business, shall file an application requesting authority to do so. The application shall contain: (i) a specific statement of the action sought; (ii) a statement of the facts that the applicant is prepared to prove that would warrant the action sought; (iii) a statement of the legal basis for such action; and (iv) any other information required by law or regulation. Any person or entity filing an application shall be a party to that proceeding.

B. Participation as a respondent. A notice of participation as a respondent is the proper initial response to an application. A notice of participation shall be filed within the time prescribed by the commission and shall contain: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought; and (iii) the factual and legal basis for the action. Any person or entity filing a notice of participation as a respondent shall be a party to that proceeding. The Division of Consumer Counsel, Office of the Attorney General, may participate as a respondent in any proceeding.

C. Public witnesses. Any person or entity not participating in a matter pursuant to 20 VAC 5-20-80 A or 5 VAC 5-20-80 B may make known his or its position in any regulatory proceeding by filing written comments in advance of the hearing or by attending the hearing, noting an appearance in the manner prescribed by the commission, and giving oral testimony. Public witnesses may not otherwise participate in the proceeding, be included in the service list, or be considered a party to the

proceeding. The commission may, at its discretion, limit public witness testimony only if it appears that the testimonies of the witnesses will be substantially similar.

D. Commission staff. The commission staff may appear and participate fully in any proceeding to see that pertinent issues on behalf of the general public interest are clearly presented to the commission. The staff may, inter alia, conduct investigations and discovery, evaluate the issues raised, testify and offer exhibits, file briefs and make argument, and be subject to cross-examination when testifying. Neither the commission staff collectively nor any individual member of the commission staff shall be considered a party to the case for any purpose by virtue of participation in a proceeding.

5 VAC 5-20-90. Adjudicatory proceedings.

A. Initiation of proceedings. Investigative, disciplinary, penal, and other adjudicatory proceedings may be initiated by motion of the commission staff or upon the commission's own motion. These proceedings shall be commenced by the issuance of a rule to show cause giving notice to the defendant, stating the allegations against the defendant, and setting the matter for hearing. A rule to show cause shall be served in the manner provided by § 12.1-19.1 or § 12.1-29 of the Code of Virginia. The commission staff shall prove the case by clear and convincing evidence.

B. Answer. An answer is the proper initial responsive pleading to a rule to show cause. An answer shall be filed within 21 days of service of the rule to show cause, unless the commission shall order otherwise. The answer shall state, in narrative form, each defendant's responses to the allegations

in the rule to show cause and any affirmative defenses asserted by the defendant. Failure to file a timely answer may result in the entry of judgment by default against the party failing to respond.

5 VAC 5-20-100. Other proceedings.

A. Promulgation of general orders, rules, or regulations. A person seeking initiation of a rulemaking procedure before the commission shall file an application meeting the requirements of 20 VAC 5-20-80 A. Before promulgating a general order, rule, or regulation, the commission shall, by order upon an application or upon its own motion, require reasonable notice of the contents of the proposed general order, rule, or regulation, including publication in the Virginia Register of Regulations, and afford interested persons an opportunity to comment, present evidence, and be heard. A copy of each general order, rule, and regulation adopted in final form by the commission shall be filed with the Registrar of Regulations for publication in the Virginia Register of Regulations.

B. Petitions in other matters. Persons having a cause before the commission, whether by statute, rule, regulation, or otherwise, against a defendant, including the commission, a commission bureau, or a commission division, shall proceed by filing a written petition containing: (i) the identity of the parties; (ii) a statement of the action sought and the legal basis for the commission's jurisdiction to take the action sought; (iii) a statement of the facts, proof of which would warrant the action sought; (iv) a statement of the legal basis for the action; and (v) a certificate showing service upon the defendant.

Within 21 days of service of a petition under this rule, the defendant shall file an answer containing, in narrative form, (i) a response to each allegation of the petition and (ii) a statement of each

affirmative defense asserted by the defendant. Failure to file a timely answer may result in entry of judgment by default against the defendant failing to respond. Upon order of the commission, the commission staff may participate in any proceeding under this rule in which it is not a defendant to the same extent as permitted by 20 VAC 5-20-80 D.

C. Declaratory judgments. Persons having no other adequate remedy may petition the commission for a declaratory judgment. The petition shall meet the requirements of 5 VAC 5-20-100 B and, in addition, contain a statement of the basis for concluding that an actual controversy exists between the parties. In the proceeding, the commission shall by order provide for the necessary notice, responsive pleadings, and participation by persons against whom the declaratory judgment is sought.

PART III.

PROCEDURES IN FORMAL PROCEEDINGS.

5 VAC 5-20-110. Motions. Motions may be filed for the same purposes recognized by the courts of record in the Commonwealth. Unless otherwise ordered by the commission, a response to a motion must be filed within 10 days of the filing of the motion, and a reply by the moving party may be filed within seven days of the filing of the response.

5 VAC 5-20-120. Procedure Before Hearing Examiners.

A. Assignment. The commission may, by order, assign a matter pending before it to a hearing examiner. Unless otherwise ordered, the hearing examiner shall conduct all further proceedings in the matter on behalf of the commission in accordance with the rules. In the discharge of his duties, the hearing examiner shall exercise all the adjudicatory powers possessed by the commission including, *inter alia*, the power to administer oaths; require the attendance of witnesses and parties; require the production of documents; schedule and conduct pre-hearing conferences; admit or exclude evidence; grant or deny continuances; and rule on motions, matters of law, and procedural questions. The hearing examiner shall issue a written final report and recommendation to the commission at the conclusion of the proceedings.

B. Objections. An objection to a ruling by the hearing examiner shall be stated with reasonable clarity at the time of the ruling, and the objection may be argued to the commission as part of a response to the hearing examiner's report. A ruling by the hearing examiner that denies further participation by a party in interest or the commission staff in a proceeding that has not been concluded may be immediately appealed to the commission by filing a written motion with the commission for review. The hearing examiner may certify any other issue to the commission for its consideration and resolution. Pending resolution by the commission of a ruling appealed or certified, the hearing examiner shall retain procedural control of the proceeding.

C. Responses to hearing examiner reports. Unless otherwise ordered by the hearing examiner, responses supporting or objecting to the hearing examiner's final report must be filed within 15 days of the issuance of the report. A reply to a response to the hearing examiner's report may only be filed with

leave of the commission. The commission may accept, modify, or reject the hearing examiner's recommendations in any manner consistent with law and the evidence, notwithstanding an absence of objections to the hearing examiner's report.

5 VAC 5-20-130. Amendment of pleadings.

Amendment of pleadings may be permitted by the commission where the ends of justice so require, upon written motion showing good cause. Responses to amended pleadings may be permitted as directed by the commission.

5 VAC 5-20-140. Filing and service.

A formal pleading or other related document shall be considered filed with the commission upon receipt of the original and required copies by the Clerk of the Commission no later than the time established for the closing of business of the clerk's office on the day the item is due. The original and copies shall be stamped by the Clerk to show the time and date of receipt. The commission may by order make provision for electronic filing of documents.

Service of a formal pleading, brief, or other document filed with the commission required to be served on the parties to a proceeding or upon the commission staff, shall be effected by delivery of a true copy to the party or staff, or by deposit of a true copy into the United States mail properly addressed and stamped, on or before the date of filing. Service on a party may be made by service on the party's counsel. At the foot of a formal pleading, brief, or other document required to be served,

the party making service shall append either acceptance of service or a certificate of counsel of record that copies were mailed or delivered as required. The commission may, by order, provide for electronic filing or service of documents. Notices, findings of fact, opinions, decisions, orders, or other paper to be served by the commission may be served by United States mail. However, all writs, processes, and orders of the commission, when acting in conformity with § 12.1-27 of the Code of Virginia, shall be attested and served in compliance with § 12.1-19.1 or § 12.1-29 of the Code of Virginia.

5 VAC 5-20-150. Copies and format.

Applications, petitions, responsive pleadings, briefs, and other documents must be filed in an original and 15 copies. One copy of each responsive pleading or brief must be served on each party and the commission staff counsel assigned to the matter, or, if no counsel has been assigned, on the General Counsel. Each document must be filed on standard size white opaque paper, 8 ½ by 11 inches in dimension, and must be capable of being reproduced in copies of archival quality. Pleadings shall be bound or attached on the left side and contain adequate margins. Each page following the first page must be numbered. If necessary, a document may be filed in consecutively numbered volumes, each of which may not exceed three inches in thickness. Pleadings containing more than one exhibit should have dividers separating each exhibit and should contain an index. Exhibits such as maps, plats, and photographs not easily reduced to standard size may be filed in a different size, as necessary. All filed documents shall be fully collated and assembled into complete and proper sets ready for distribution and

use, without the need for further assembly, sorting, or rearrangement. The Clerk of the Commission may reject the filing of any document not conforming to the requirements of this rule.

5 VAC 5-20-160. Memorandum of completeness.

With respect to the filing of a rate application or an application seeking action, that by statute or rule must be completed within a certain number of days, a memorandum shall be filed by an appropriate member of the commission staff within 10 working days of the filing of the application stating whether all necessary requirements for filing the application have been met and all required information has been filed. If the requirements have not been met, the memorandum shall state with specificity the remaining items to be filed. The Clerk of the Commission shall serve a copy of the memorandum on the filing party. The first day of the period within which action on the application must be concluded shall be set forth in the memorandum and shall be the initial date of filing of applications that are found to be complete upon filing. Applications found to require supplementation shall be complete upon the date of filing of the last item identified in the Staff memorandum.

5 VAC 5-20-170. Confidential information.

A person who proposes in a formal proceeding that information be withheld from public disclosure on the ground that it contains trade secrets, privileged, or confidential commercial or financial information shall file this information under seal with the Clerk of the Commission, together with a motion requesting the withholding, accompanied by an affidavit that: (i) identifies the information sought

to be withheld and the person making the affidavit; and (ii) contains a full statement of the reasons forming the basis for the claim that the information should be withheld from public disclosure. One copy of all such information also shall be submitted under seal to the commission staff counsel assigned to the matter, or, where no counsel has been assigned, to the General Counsel who, until ordered otherwise by the commission, shall disclose the information only to the members of the commission staff directly assigned to the matter as necessary in the discharge of their duties. Staff counsel and all members of the commission staff, until otherwise ordered by the commission, shall maintain the information in strict confidence and shall not disclose its contents to members of the public, or to other staff members not assigned to the matter. The commission staff or any party may object to the proposed withholding of the information.

If the commission determines that the information should be withheld from public disclosure, it may nevertheless require the information to be disclosed to parties to a proceeding under appropriate protective order. This rule shall apply to material offered in support of or opposition to the application and to responses and objections to interrogatories and other discovery as practicable.

5 VAC 5-20-180. Official transcript of hearing.

The official transcript of a hearing before the commission or a hearing examiner shall be that prepared by the court reporters retained by the commission and certified by the court reporter as a true and correct transcript of the proceeding. Transcripts of proceedings shall not be prepared except in cases assigned to a hearing examiner, when directed by the commission, or when requested by a party

desiring to purchase a copy. Parties desiring to purchase copies of the transcript shall make arrangement for purchase with the court reporter. When a transcript is prepared, a copy thereof shall be made available for public inspection in the Clerk of the Commission's office. Within 15 days of the filing of the transcript, the commission staff or a party who believes the transcript contains substantive errors may propose corrections, in writing, which shall be filed with the Clerk of the Commission, and copies of which shall be served on the court reporter, all parties, and commission staff counsel. If the court reporter receives no objection to the proposed corrections within 10 days of the filing of the proposed corrections, the reporter will revise the transcript accordingly, and the corrected version will become the official transcript. A party or the commission staff may object to a proposed correction by filing an objection within seven days of the filing of the proposed correction. If objections are filed, the matter will be resolved by the commission or hearing examiner, as the case may be.

5 VAC 5-20-190. Rules of evidence.

In proceedings under 5 VAC 5-20-90, and all other proceedings in which the commission shall be called upon to decide or render judgment only in its capacity as a court of record, the common law and statutory rules of evidence shall be as observed and administered by the courts of record of the Commonwealth. In other proceedings, evidentiary rules shall not be used to prevent the receipt of evidence having substantial probative effect.

5 VAC 5-20-200. Briefs.

Written briefs may be authorized at the discretion of the commission. The time for filing briefs and reply briefs, if authorized, shall be set at the time they are authorized. The commission may limit the length of a brief. The commission may by order provide for the electronic filing or service of briefs.

5 VAC 5-20-210. Oral argument.

The commission may authorize oral argument, limited as the commission may direct, on any pertinent matter at any time during the course of proceeding.

5 VAC 5-20-220. Petition for rehearing or reconsideration.

Final judgments, orders, and decrees of the commission, except judgments prescribed by § 12.1-36 of the Code of Virginia, and except as provided in §§ 13.1-614 and 13.1-813 of the Code of Virginia, shall remain under the control of the commission and subject to modification or vacation for 21 days after the date of entry. A petition for rehearing or reconsideration must be filed not later than 20 days after the date of entry of this judgment, order, or decree. The filing of a petition will not suspend the execution of the judgment, order, or decree, nor extend the time for taking an appeal, unless the commission, within the 21 day period following entry of the final judgment, order or decree, shall provide for a suspension in an order or decree granting the petition. A petition for rehearing or reconsideration must be delivered to all parties and commission staff counsel on or before the day on which it is filed. The Commission will not entertain responses to, or requests for oral argument on, a

petition. An order granting a rehearing or reconsideration will be served on all parties and commission staff counsel by the Clerk of the Commission.

5 VAC 5-20-230. Extension of time.

The commission may, at its discretion, grant a continuance, postponement, or extension of time for the filing of a document or the taking of an action required or permitted by these rules, except for petitions for rehearing or reconsideration filed pursuant to 5 VAC 5-20-220. Motions for extensions shall be made in writing, served on all parties and commission staff counsel, and filed with the commission at least three days prior to the date to be extended, except for good cause shown.

PART IV.

DISCOVERY AND HEARING PREPARATION PROCEDURES.

5 VAC 5-20-240. Prepared testimony and exhibits.

Following the filing of an application dependent upon complicated or technical proof, the commission may direct the applicant to prepare and file the testimony and exhibits by which the applicant expects to establish its case. Respondents, in all proceedings in which an applicant is required to file testimony, shall be permitted to file testimony and exhibits by which they expect to establish their case, as directed by the commission. The commission staff also shall file testimony and exhibits when directed to do so by the commission. Failure to comply with the directions of the commission, without

good cause shown, may result in rejection of the testimony and exhibits by the commission. With leave of the commission, the commission staff or a party may correct or supplement any prepared testimony and exhibits before or during the hearing. In all proceedings, all evidence must be verified by the witness before introduction into the record, and the admissibility of the evidence shall be subject to the same standards as if the testimony were offered orally at hearing. An original and 15 copies of prepared testimony and exhibits shall be filed unless otherwise specified in the commission's scheduling order and public notice. Documents of unusual bulk or weight and physical exhibits other than documents need not be filed in advance, but shall be described and made available for pretrial examination.

5 VAC 5-20-250. Process, witnesses, and production of documents and things.

A. Subpoenas. Commission staff and a party to a proceeding shall be entitled to process, to convene parties, to compel the attendance of witnesses, and to compel the production of books, papers, documents, or things provided in this rule.

Commission staff counsel may petition the commission to issue and enforce subpoenas at the request of a regulatory agency of another jurisdiction if the activity for which the information is sought by the other agency, if occurring in the Commonwealth, would be a violation of the laws of the Commonwealth that are administered by the commission.

B. Documents. Whenever it appears to the commission by affidavit filed with the Clerk of the Commission by the commission staff or a party to a proceeding, that a book, writing, document, or thing

sufficiently described in the affidavit, is in the possession, or under the control, of an identified person not a party to a proceeding nor a member of the commission's staff and is material and proper to be produced in the proceeding, the commission will order the Clerk of the Commission to issue a subpoena and to have the subpoena duly served, together with an attested copy of the commission's order compelling production at a reasonable place and time as described in the commission's order.

C. Witnesses. Subpoenas for witnesses shall be by order of the commission upon motion timely filed with the Clerk of the Commission. The motion, if granted, will be subject to such conditions and restrictions as the commission shall deem proper.

5 VAC 5-20-260. Interrogatories to parties or requests for production of documents and things.

The commission staff and a party in a formal proceeding before the commission, other than a proceeding under 5 VAC 5-20-80 A, may serve written interrogatories upon a party, to be answered by the party served, or if the party served is an entity, by an officer or agent of the entity, who shall furnish to the requesting party information as is known. Interrogatories that cannot be timely answered before the scheduled hearing date may be served only with leave of the commission for good cause shown and upon such conditions as the commission may prescribe. No interrogatories may be served upon a member of the commission staff.

The response to each interrogatory shall be signed by the person making the response. Objections, if any, to specified questions shall be stated with specificity, citing appropriate legal

authority, and served with the list of responses. Responses and objections to interrogatories shall be served within 10 days of receipt, unless otherwise ordered by the commission. Upon motion promptly made and accompanied by a copy of the interrogatory and response or objection that is subject to the motion, the commission will rule upon the validity of the objection; the objection otherwise will be considered sustained.

Interrogatories may relate to any matter, not privileged, which is relevant to the subject matter involved, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of evidentiary value. It is not grounds for objection that the information sought will be inadmissible at the hearing if the information appears reasonably calculated to lead to the discovery of admissible evidence.

Where the response to an interrogatory may only be derived or ascertained from the business records of the party questioned, from an examination, audit, or inspection of business records, or from a compilation, abstract, or summary of business records, and the burden of deriving or ascertaining the response is substantially the same for one entity as for the other, a response is sufficient if it: (i) identifies by name and location all records from which the response may be derived or ascertained; and (ii) tenders to the inquiring party reasonable opportunity to examine, audit, or inspect the records subject to objection as to their proprietary or confidential nature. The inquiring party bears the expense of making copies, compilations, abstracts, or summaries.

Discovery of original work product or material prepared in anticipation of litigation may not be obtained by a party, unless it is demonstrated that a substantial need exists for the material and that

substantially equivalent material cannot be obtained by other means without undue hardship. In ordering such discovery, the commission will prevent disclosure of the mental impressions, conclusions, opinions, or legal theory of an attorney.

5 VAC 5-20-270. Hearing preparation.

In a formal proceeding, a party or the commission staff may serve on a party a request to examine the workpapers supporting the testimony or exhibits of a witness whose prepared testimony has been filed in accordance with 5 VAC 5-20-240. The movant may make abstracts or summaries of the workpapers, and may make copies of the workpapers upon payment of the reasonable cost of duplication or reproduction. Copies requested by the commission staff shall be furnished without payment of copying costs. In actions pursuant to 5 VAC 5-20-80 A the commission staff, upon the filing of its testimony, exhibits, or report, will compile and file with the Clerk of the Commission three copies of any workpapers that support the recommendations made in its testimony or report. The Clerk of the Commission shall make the workpapers available for public inspection during regular business hours.

5 VAC 5-20-280. Discovery in 5 VAC 5-20-90 proceedings.

The following applies only to proceedings in which a defendant is subject to monetary or injunctive penalties, or revocation, cancellation, or curtailment of a license, certificate of authority, registration, or similar authority previously issued by the commission to the defendant.

A. Discovery of material in possession of the Commission staff. Upon written motion of the defendant, the commission shall permit the defendant to inspect and, at the defendant's expense, copy or photograph any relevant: (i) written or recorded statements, the existence of which is known by the commission staff counsel assigned to the matter to be within the custody, possession, or control of commission staff, made by the defendant, or representatives, or agents of the defendant if the defendant is other than an individual, to a commission staff member or law enforcement officer; and (ii) evidence that might reasonably be considered to be exculpatory of the defendant and which is known by commission staff counsel to be within the custody, possession, or control of the commission staff.

A motion by the defendant under this rule shall be filed and served at least 10 days before the hearing date. The motion shall include all relief sought. A subsequent motion may be made only upon a showing of cause as to why the motion would be in the interest of justice. An order granting relief under 5 VAC 5-20-280 shall specify the time, place, and manner of making discovery and inspection permitted, and may prescribe such terms and conditions as the commission may determine.

Nothing in this rule shall require the disclosure of any information, the disclosure of which is prohibited by statute. The disclosure of the results of a commission staff investigation or work product of commission staff counsel shall not be required.

B. Depositions. After commencement of an action to which this rule applies, the commission staff or a party may take the testimony of a party or another person or entity, other than a member of the commission staff, by deposition on oral examination or by written questions. Depositions may be used for any purpose for which they may be used in the courts of record of the Commonwealth. Except

where the commission or hearing examiner finds that an emergency exists, no deposition may be taken later than 10 days in advance of the formal hearing. The attendance of witnesses at depositions may be compelled by subpoena. Examination and cross-examination of the witness shall be as at hearing. Depositions may be taken in the City of Richmond or in the town, city, or county in which the deposed party resides, is employed, or does business. The parties and the commission staff, by agreement, may designate another place for the taking of the deposition. Reasonable notice of the intent to take a deposition must be given in writing to the commission staff counsel and to each party to the action, stating the time and place where the deposition is to be taken. A deposition may be taken before any person (the "officer") authorized to administer oaths by the laws of the jurisdiction in which the deposition is to be taken. The officer shall certify his authorization in writing, administer the oath to the deponent, record or cause to be recorded the testimony given, and note any objections raised. In lieu of participating in the oral examination, a party or the commission staff may deliver sealed written questions to the officer, who shall propound the questions to the witness. The officer may terminate the deposition if convinced that the examination is being conducted in bad faith or in an unreasonable manner. Costs of the deposition shall be borne by the party noticing the deposition, unless otherwise ordered by the commission.

C. Requests for admissions. The commission staff or a party to a proceeding may serve upon a party written requests for admission. Each matter on which an admission is requested shall be stated separately. A matter shall be deemed admitted unless within 21 days of the service of the request, or some other period the commission may designate, the party to whom the request is directed serves

upon the requesting party a written answer addressing or objecting to the request. The response shall set forth in specific terms a denial of the matter set forth or an explanation as to the reasons the responding party cannot truthfully admit or deny the matter set forth. Requests for admission shall be filed with the Clerk of the Commission and simultaneously served on commission staff counsel and on all parties to the matter.